



TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 425

**FRANK WHITE, TREASURER OF THE UNITED STATES;
AND FREDERICK C. HICKS, ALIEN PROPERTY CUSTODIAN, APPELLANTS.**

SECURITIES CORPORATION GENERAL

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

RECORDED MAY 14, 1926

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 425

FRANK WHITE, TREASURER OF THE UNITED STATES;
AND FREDERICK C. HICKS, ALIEN PROPERTY CUS-
TODIAN, APPELLANTS,

vs.

SECURITIES CORPORATION GENERAL

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA

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a Supreme Court of the District of Columbia

SECURITIES CORPORATION GENERAL, a CORPORATION, complainant

v/s.

FRANK WHITE, TREASURER OF THE UNITED STATES, and Thomas W. Miller, Alien Property Custodian, defendants

Equity No. 41153

UNITED STATES OF AMERICA.

District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill of complaint*

Filed April 4, 1923

In the Supreme Court of the District of Columbia

SECURITIES CORPORATION GENERAL, a CORPORATION, complainant

v/s.

FRANK WHITE, TREASURER OF THE UNITED STATES, and Thomas W. Miller, Alien Property Custodian, defendants

Equity No. 41153

To the Supreme Court of the District of Columbia:

Securities Corporation General, complainant herein, respectfully states to this honorable court as follows:

1. That it is a corporation organized under the laws of the State of Virginia, and that it brings this suit under the provisions of section 9 of an act of Congress approved October 6, 1917, as amended, and commonly known as "The trading with the enemy act."

2. That the defendants, Frank White and Thomas W. Miller, are citizens of the United States, and are sued as Treasurer of the United States and as Alien Property Custodian, respectively.

3. That the purpose of this suit is to establish a debt owing to complainant by the Imperial German Government and by its successor Government, the Republic of Germany, and to obtain from this honorable court an order directing the debt to be paid out of the money, or other property formerly belonging to said Imperial German Government, which was delivered or paid to and is now held by the defendants.

4. That the complainant is a person, not an enemy or an ally of an enemy within the meaning of section 9 of the trading with the enemy act, approved October 6, 1917, as amended.

5. That on October 6, 1917, the date of the approval of the said trading with the enemy act, the Imperial German Government was an enemy within the meaning of said act and continued to be an enemy until it ceased to exist as a government.

6. That prior to October 6, 1917, the Imperial German Government owed to complainant the sum of two hundred and fifty thousand dollars (\$250,000) evidenced by 6% Treasury notes of the par value of forty thousand dollars (\$40,000) dated May 6, 1916, and of the par value of two hundred and ten thousand dollars (\$210,000) dated May 24, 1916, all of said notes payable on April 1, 1917, known as Series 26; that complainant purchased said notes for value long prior to the declaration of war between the United States and Germany and prior to October 6, 1917; and that said notes aggregating two hundred and fifty thousand dollars (\$250,000) constitute a debt within the meaning of the provisions of section 9 of the trading with the enemy act, as amended; that on or about March 14, 1917, the payment and maturity of these notes was extended to April 1, 1918 and interest thereon paid in advance to September 1, 1918; that thereafter, and on the 1st day of April, 1920, the 3 amount of eight thousand eighty-three and thirty-three cents (\$8,083.33) was paid to complainant out of funds which had been paid to the Alien Property Custodian as the property of the Imperial German Government, which said payment, being applied by complainant on account of past due interest, paid said interest up to and including the 14th day of March, 1919.

7. That since said last stated date, no interest has been paid and the same is past due and in default and has accrued and is accruing upon said indebtedness at the rate of six per centum (6%) per annum, and has become and is becoming a part of the principal of said indebtedness.

8. That the Alien Property Custodian now has in his possession, or to his credit in the Treasury of the United States, funds of the Imperial German Government which were paid and delivered to him under the provisions of said trading with the enemy act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest owing to complainant.

9. That the present German Government has recognized the debt of the Imperial German Government and has admitted the indebtedness claimed by Securities Corporation General, both principal and past due interest, said indebtedness being evidenced by said German Treasury notes of the Imperial German Government and the present German Government has consented in writing to the payment of the principal and interest of said debt out of available funds now in the possession of the Alien Property Custodian, or to his credit in the treasury of the United States.

10. That complainant has duly filed under oath, a notice of its said claim with the Alien Property Custodian and in such 4 form and containing such particulars as were required by said custodian for the allowance and payment of its debt out of funds in the possession of the Alien Property Custodian, or in the Treasury of the United States and available for such payment, and has duly made application to the President of the United States for the payment of said debt; that more than sixty (60) days have elapsed since the filing of said application, and there has been no order issued by the President of the United States directing the payment of said debt, or any part thereof, to complainant.

Wherefore, complainant presents this, its bill of complaint, and prays:

1. That the said Frank White, Treasurer of the United States, and the said Thomas W. Miller, Alien Property Custodian, may be made parties defendant to this bill, and required to answer the same, but not under oath—answer under oath being hereby expressly waived.

2. That the right of the complainant to recover said sum of two hundred and fifty thousand dollars (\$250,000) with interest at the rate of six per centum (6%) per annum, from the 14th day of March, 1919, may be established, determined and adjudicated, and that the complainant may be awarded a decree against the said Frank White Treasurer of the United States, and Thomas W. Miller, Alien Property Custodian, for the payment of said sum of two hundred and fifty thousand dollars (\$250,000) and the interest thereon as aforesaid.

3. That due process may be issued and complainant may be granted such other, further and general relief in the premises as the nature of its case may require, or to equity may seem meet, and complainant will ever pray.

SECURITIES CORPORATION GENERAL,
By: P. M. CHANDLER,

President. [SEAL.]

CARLIN, CARLIN & HALL

1127 Munsey Building, Washington, D. C.,
Attorneys for Complainant.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

I, P. M. Chandler, being first duly sworn, depose and say: That I am president of Securities Corporation General, complainant in the above-entitled suit; that I have read the foregoing bill of complaint and know the contents thereof; and that I verily believe the allegations and statements contained herein to be true.

P. M. CHANDLER.

Subscribed and sworn to before me this 31st of March, 1923.

[SEAL.]

M. F. McCUE,
Notary Public.

(Commission expires at end of next session of Senate.)

6 Spa to ans.

Issued April 4, 1923

The President of the United States to 1. Frank White, Treasurer of the United States and 2. Thomas W. Miller, Alien Property Custodian, defendants.

You are hereby commanded to appear in this court on or before the tenth day, exclusive of Sundays and legal holidays, after the day of the service of this subpoena upon you and answer the exigency of the bill, under pain of attachment and such other process of contempt as the court shall award; and if your appearance in this suit be not entered in the clerk's office within said time the bill may be taken for confessed.

Witness, the honorable Walter I. McCoy, chief justice of said court, the 4th day of April, A. D. 1923.

[SEAL.]

MORGAN H. BEACH, *Clerk.*
By F. E. CUNNINGHAM,
Assistant Clerk.

CARLIN, CARLIN & HALL,
Attorneys.

Marshall's return

Served copy of within on

1. Personally.

2. "

4/6/23.

E. C. SNYDER, *U. S. Marshal.*
K.

7

Motion to dismiss

Filed May 5, 1923

* * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esquire, attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the bill of complaint, and as grounds for their separate and several motions assign the following:

(1) It appears affirmatively from the allegations of the bill of complaint that the Imperial German Government, and/or its successor or successors, has an interest in the subject matter of this suit and has not been made a party thereto.

(2) It does not appear from the allegations of the bill complaint that the Imperial German Government, and/or its successor or successors, has consented that this court shall have jurisdiction to adjudicate with respect to claims against the said Government or to subject its property to the payment of claims against it.

(3) That the bill of complaint does not state grounds for equitable relief against these defendants within the jurisdiction of this court.

(4) The plaintiff has not stated facts sufficient to entitle it to equitable relief under the provisions of section 9 of the trading with the enemy act.

(5) That pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the treaty 8 between the United States of America and Germany, signed August 25, 1921, and effective at the time of the filing of the bill of complaint herein, the United States of America became and ever since said time was and now is the owner of the moneys which plaintiff seeks in this suit to subject to the payment of its claim.

PEYTON GORDON,

Attorney of the United States in and for the District of Columbia, attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

Order overruling motion to dismiss

Filed January 9, 1924

* * * * *

This cause coming on to be heard on a motion to dismiss the bill of complaint herein filed by the defendants on the 5th day of May, 1923, after argument by counsel and consideration thereof, it is hereby ordered, this, the 9th day of January, 1924, that said motion to dismiss be, and the same is hereby, overruled.

WENDELL P. STAFFORD, *Justice.*

I consent as to form.

DEAN HILL STANLEY,
*Counsel for defendants.**Answer of defendants*

Filed March 20, 1924

* * * * *

9 Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally answering the bill of complaint, and as their separate and several answers say:

(1) These defendants admit the averments of paragraph numbered 1 of the bill of complaint.

(2) These defendants admit the averments of paragraph numbered 2 of the bill of complaint.

(3) That the allegations of paragraph numbered 3 of the bill of complaint are immaterial and irrelevant for the purposes of this suit, and these defendants should not be required to answer the same.

(4) They admit the averments of paragraph numbered 4 of the bill of complaint.

(5) They admit the averments of paragraph numbered 5 of the bill of complaint.

(6) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 6 of the bill of complaint, and therefore demand strict proof thereof.

(7) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 7 of the bill of complaint, and therefore demand strict proof thereof.

(8) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 8 of the bill of complaint, and therefore demand strict proof thereof.

(9) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 9 of the bill of complaint, and therefore demand strict proof thereof.

(10) They admit the averments of paragraph numbered 10 of the bill of complaint.

Wherefore, these defendants pray that the bill of complaint be dismissed with costs.

THOMAS W. MILLER,
Alien Property Custodian.
FRANK WHITE,
*Treasurer of the United States.*PEYTON GORDON,
Attorney of the United States
in and for the District of Columbia.

DISTRICT OF COLUMBIA, *ss*:

THOMAS W. MILLER, being first duly sworn, upon oath deposes and says that he is Alien Property Custodian of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those stated as upon information and belief he believes to be true.

THOS. W. MILLER.

Subscribed and sworn to before me this 20th day of March, 1924.

[SEAL.]

SOPHIE D. HILLMAN,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss*:

FRANK WHITE, being first duly sworn, upon oath deposes and says that he is Treasurer of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those stated as upon information and belief he believes to be true.

FRANK WHITE.

Subscribed and sworn to before me this 19th day of March, 1924.

[SEAL.]

ELLA F. VAN ZANDT,
Notary Public, D. C.

Stipulation

Filed June 19, 1924

* * * * *

The original answer filed by the above-named defendants in the case of the Mechanics Securities Corporation *vs.* the same defendants, Equity No. 41284, having been introduced in evidence in support of the plaintiff's claim herein, over the objection and exception of the defendants, and it appearing that certain portions of said answer and certain exhibits, marked A, B, C, and D, attached thereto, may be omitted from the record in this case, without prejudice to the contentions of the plaintiff or the defendants, with the consent of the court, it is hereby stipulated and agreed by and between the attorneys for the respective parties to the above entitled cause, as follows, to wit:

1. That the said original answer in the Mechanics case, offered as plaintiff's Exhibit 3, may be withdrawn from the record in this case, and in lieu thereof portions of said answer may be filed herein to be read as evidence subject to the objection and exception of defendants on behalf of the plaintiff.

2. That the portions of said answer in the Mechanics Securities Corporation case to be read and considered as evidence in this case subject to the objection and exception of defendants, are as follows:

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally answering the bill of complaint and as their separate and several answers say:

(1-2) These defendants admit the averments of paragraphs numbered 1 and 2 of the bill of complaint.

(3) That the allegations of paragraph numbered 3 of the bill of complaint are immaterial and irrelevant for the purposes of this suit, and these defendants should not be required to answer the same.

(4-5) They admit the averments of paragraphs numbered 4 and 5 of the bill of complaint.

(6) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 6 of the bill of complaint, and therefore demand strict proof thereof.

Further answering the said paragraph, these defendants separately and severally say that on or about the 13th day of February, 1920, Chandler & Company, Inc., as trustee, filed its notice of claim

pursuant to the terms and provisions of section 9 of the trad-
13 ing with the enemy act for ninety-six thousand five hundred eighty dollars and fifty-five cents (\$96,580.55), which had theretofore been delivered to the Alien Property Custodian by the said Chandler & Company, Inc., as the money of the Imperial German Government. On the same date the said Chandler & Company, Inc., duly filed its application to the President for the allowance of the said claim under section 9 of the trading with the enemy act. The said claim of Chandler & Company, Inc., was based upon the fact that the said ninety-six thousand five hundred eighty dollars and fifty-five cents (\$96,580.55) had been deposited with the claimant prior to October 6, 1917, for the payment of interest on notes of the Imperial German Government. Thereafter the said claim was allowed by the Attorney General of the United States to whom the President had by executive order delegated his authority under the terms and provisions of the trading with the enemy act for the reason that as found by the Attorney General the aforesaid money had been paid over unqualifiedly to Chandler & Co., Inc., by the German Government for the purpose aforesaid, and was held by Chandler & Co., Inc., not for the German Government but as trustee for the holders and owners of the said notes and upon the further finding by the Attorney General that the said money belonged to citizens of the United States both in the capacity of trustee and as cestui que trust, and the Treasurer of the United States was ordered to pay to Chandler & Co., Inc., the sum of \$96,580.55 out of the money held in the Treasury of the United States pursuant to the trading with the enemy act, in Trust No. 555 as the property of the Imperial German Government. Thereafter the said
14 claim was duly paid by the Treasurer of the United States,

not in recognition of the validity of the claim of the plaintiff or of any other person as set forth in the bill of complaint, but upon the order of the Attorney General of the United States based upon his aforesaid findings.

(7) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph 7 of the bill of complaint, and therefore demand strict proof thereof.

(8) Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto and the proclamations and Executive orders issued

thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto and the proclamations and Executive orders issued thereunder, and that certain moneys were owning or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the trading with the enemy act. The amount

15 of said moneys received as aforesaid is at the present time approximately five hundred fifteen thousand five hundred seventy-one dollars (\$515,571) and is held by the Alien Property Custodian in trust No. 555.

Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto and the proclamations and Executive orders issued thereunder, after investigation, determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of five million dollars (\$5,000,000), held for, by, on account of, and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of five million dollars (\$5,000,000), which he paid to the Treasurer of the United States, in accordance with the terms and provisions of the trading with the enemy act, and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter, and to wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that two million two hundred thousand dollars (\$2,200,000) of the five million dollars (\$5,000,000) received as aforesaid was at the time of the receipt thereof by the Alien Property Custodian held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the

16 United States to transfer from trust No. 9322 the sum of two million two hundred thousand dollars (\$2,200,000) and to place the same to the credit of the Imperial German Government, opening a special account designated "Trust 555, special." Thereafter the Treasurer of the United States, pursuant to the said instructions, so transferred the said two million two hundred thousand dollars (\$2,200,000) to said trust.

Further answering said paragraph, these defendants say that they have no further knowledge, information or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this Court must determine out of what, if any, of the money held by the Alien Property Custodian, and/or the Treasurer of the United States, any claim which these defendants may establish must be paid.

(9) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 9 of the bill of complaint, and therefore demand strict proof thereof.

(10) They admit the averments of paragraph numbered 10 of the bill of complaint.

CARLIN, CARLIN & HALL,
By M. CARTER HALL,
Attorneys for Plaintiff.
DEAN HILL STANLEY,
Attorney for Defendants.

Final decree

Filed at 11.30 a. m. June 19, 1924

17 This cause coming on to be heard on the bill of complaint of the plaintiff and the answer of the defendants, Frank White, as Treasurer of the United States, and Thomas W. Miller, as Alien Property Custodian, and the said plaintiff, by its attorneys, having, this 19th day of June, 1924, in open court, the attorneys for the said Frank White, as Treasurer of the United States, and the said Thomas W. Miller, as Alien Property Custodian, being present therein, presented evidence supporting the allegations of the bill of complaint, and the same having been considered by the court, it is by the court, this 19th day of June, 1924, ordered, adjudged and decreed:

1. That the said plaintiff is not, and never has been, an enemy or ally of enemy within the provisions of an act of Congress, approved October 6, 1917, entitled "An act to define, regulate and punish trading with the enemy, and for other purposes," as amended.

2. That prior to October 6, 1917, the Imperial German Government was an enemy within the provisions of said trading with the enemy act, and owed the plaintiff a debt in the sum of two hundred and fifty thousand dollars (\$250,000) evidenced by its Treasury notes, as follows:

(a) Issue May 6, 1916, series 26 Lit. X, 91, for \$10,000; 93-95, inclusive, for \$10,000 each.

(b) Issue May 24, 1916, series 26 Lit. X, 43-50, inclusive for \$25,000 each.

(c) Issue May 24, 1916, series 26 Lit. X, 126, for \$10,000

All of said notes bearing 6% interest.

3. That the plaintiff has established said debt and is entitled to be paid the sum of two hundred and fifty thousand dollars (\$250,000) and interest at the rate of 6% from July 14, 1919, out of funds aggregating two million seven hundred and fifteen thousand, five hundred and seventy-one dollars (\$2,715,571), belonging to the Imperial German Government, and seized by the defendant, Thomas W. Miller, as Alien Property Custodian, and in the possession of the defendant Frank White, as Treasurer of the United States, in trusts numbered 555 and 555 special.

4. That upon presentation and surrender of said Treasury Notes of the Imperial German Government, as set forth herein, the said defendant, Frank White, as Treasurer of the United States, shall

forthwith pay and deliver to the said plaintiff the said sum of two hundred and fifty thousand dollars (\$250,000), with interest at the rate of six per centum (6%) per annum from July 14, 1919, until paid.

WENDELL P. STAFFORD, *Justice.*

From the foregoing decree Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, note an appeal in open court to the Court of Appeals of the District of Columbia.

WENDELL P. STAFFORD, *Justice.*

I have no objection as to form.

DEAN HILL STANLEY
Special Assistant to the Attorney General.

Assignment of Errors

Filed June 26, 1924

* * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, and file the following assignment of errors upon which they will rely upon their appeal from the order and decree made by this honorable court on the 19th day of June 1924, in the above-entitled cause:

First: That the court erred in overruling the motion to dismiss filed on behalf of the defendants.

Second: That the court erred in not sustaining the motion to dismiss filed on behalf of the defendants.

Third: That the court erred in not ordering, adjudging and decreeing that the bill of complaint be dismissed.

Fourth: That the court erred in adjudging and holding that the Imperial German Government, or its successor or successors, is not a necessary party to the suit.

Fifth: That the court erred in ordering, adjudging and decreeing that the plaintiff has established a debt and is entitled to be paid the sum of \$250,000 and interest at the rate of 6% per annum from July 14, 1919, out of funds aggregating \$2,715,571, belonging to the Imperial German Government, and seized by the defendants, Thomas W. Miller, as Alien Property Custodian, and in the possession of the defendant, Frank White, as Treasurer of the United States, in trusts numbered 555 and 555, special.

20 *Sixth:* That the court erred in ordering, adjudging and decreeing that there was in the possession of the defendant, Frank White, as Treasurer of the United States, \$2,715,571 belonging to the Imperial German Government.

Seventh: That the court erred in ordering, adjudging and decreeing that the defendant, Thomas W. Miller, as Alien Property Custodian seized the sum of 2,715,571 belonging to the Imperial German Government.

Eighth: That the court erred in not ordering, adjudging and decreeing that there was not in the possession either of Thomas W.

Miller as Alien Property Custodian, and Frank White, as Treasurer of the United States, or either of them, any sum of money which at the time of the receipt thereof by either the Custodian or the Treasurer, was the money of the Imperial German Government.

Ninth: That the court erred in not ordering, adjudging and decreeing that there was no evidence in the case to show there was in the possession either of Thomas W. Miller, as Alien Property Custodian, or Frank White, as Treasurer of the United States, any money belonging to the Imperial German Government, or its successor or successors.

Tenth: The court erred in admitting into evidence over the objection and exception of the defendants, certain portions of the answer filed on behalf of these defendants in the case of Mechanics Securities Corporation against Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, equity No. 41284, which is in words and figures as follows:

21 Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally answering the bill of complaint and as their separate and several answers say:

(1-2) These defendants admit the averments of paragraphs numbered 1 and 2 of the bill of complaint.

(3) That the allegations of paragraph numbered 3 of the bill of complaint are immaterial and irrelevant for the purpose of this suit, and these defendants should not be required to answer the same.

(4-5) They admit the averments of paragraphs numbered 4 and 5 of the bill of complaint.

(6) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 6 of the bill of complaint, and therefore demand strict proof thereof.

Further answering the said paragraph, these defendants separately and severally say that on or about the 13th day of February, 1920, Chandler & Company, Inc., as trustee, filed its notice of claim pursuant to the terms and provisions of section 9 of the trading with the enemy act for ninety-six thousand five hundred eighty dollars and fifty-five cents (\$96,580.55), which had theretofore been delivered to the Alien Property Custodian by the said Chandler & Company, Inc., as the money of the Imperial German Government. On the same date the said Chandler & Company, Inc., duly filed its application to the President for the allowance of the said claim

under section 9 of the trading with the enemy act. The said

22 claim of Chandler & Company, Inc., was based upon the fact

that the said ninety-six thousand five hundred and eighty dollars and fifty-five cents (\$96,580.55) had been deposited with the claimant prior to October 6, 1917, for the payment of interest on notes of the Imperial German Government. Thereafter the said claim was allowed by the Attorney General of the United States to whom the President had by executive order delegated his authority under the terms and provisions of the trading with the enemy act for the reason that as found by the Attorney General the aforesaid money had been paid over unqualifiedly to Chandler & Co., Inc., by

the German Government for the purpose aforesaid, and was held by Chandler & Co., Inc., not for the German Government but as trustee for the holders and owners of the said notes and upon the further finding by the Attorney General that the said money belonged to citizens of the United States both in the capacity of trustee and as cestui que trust, and the Treasurer of the United States was ordered to pay to Chandler & Co., Inc., the sum of \$96,580.55 out of the money held in the Treasury of the United States pursuant to the trading with the enemy act, in trust No. 555 as the property of the Imperial German Government. Thereafter the said claim was duly paid by the Treasurer of the United States, not in recognition of the validity of the claim of the plaintiff or of any other person as set forth in the bill of complaint, but upon the order of the Attorney General of the United States based upon his aforesaid findings.

23 (7) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph 7 of the bill of complaint, and therefore demand strict proof thereof.

(8) Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto and the proclamations and executive orders issued thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto and the proclamations and executive orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held, administered and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the trading with the enemy act. The amount of said moneys received as aforesaid is, at the present time, approximately five hundred fifteen thousand, five hundred seventy-one dollars (\$515,571.) and is held by the Alien Property Custodian in trust No. 555.

24 Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto and the proclamations and executive orders issued thereunder, after investigation, determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of five million dollars (\$5,000,000.) held for, by, on account of, and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of five million dollars (\$5,000,000.) which he paid to the Treasurer of the United States,

in accordance with the terms and provisions of the trading with the enemy act, and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter, and to wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that two million two hundred thousand dollars (\$2,200,000.) of the five million dollars (\$5,000,000.) received as aforesaid was at the time of the receipt thereof by the Alien Property Custodian, held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from Trust Co. 9322 the sum of two million two hundred thousand dollars (\$2,200,000.) and to place the same to the credit of the Imperial German Government, opening a special account designated "Trust 555, special". Thereafter the Treasurer of the

United States, pursuant to the said instructions, so transferred 25 the said two million, two hundred thousand dollars (\$2,200,000.) to said trust.

Further answering said paragraph, these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this court must determine out of what, if any, of the money held by the Alien Property Custodian, and/or the Treasurer of the United States, any claim which these defendants may establish must be paid.

(9) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 9 of the bill of complaint, and therefore demand strict proof thereof.

(10) They admit the averments of paragraph numbered 10 of the bill of complaint.

Eleventh: The court erred in admitting into evidence over the objection and exception of the defendants, plaintiff's Exhibit 4, which is in words and figures as follows:

UNITED STATES OF AMERICA,
Treasury Department, June 13, 1924.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed papers are true copies of the record entries of the Treasury in trust No. 9322, "Undisclosed enemy #1," and trust No. 555—Special, "Imperial German Government," showing transfer of funds from trust No. 9322 to trust No. 555—Special, and the letter dated March 9, 1923, authorizing such transfer in this department.

26 In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

GARRARD B. WINSTON,
Under-Secretary of the Treasury.
H. H.

Trust #333—Special. Date C/D No. Trans. from Tr. #9322. (The following appears in red ink: (4 suits 5/11/23) (5 suits) Imperial German Government. Amount Col. Bk. \$2,200,000.00 A. P. C. letter of 3/9/23.

Do not post on this card.

Trust #9322. Date C/D No. 3/29/18 1. Undisclosed enemy #1. Amount Col. Bk. 5,077,057.64.

NOTE.—Above amount originally deposited by Custodian in Boston F. R. B. Transferred to Treasury under above date.

M.

Trans. to Tr. 555 Special 2,200,000.00 A. P. C. letter 3/9/23.

\$2,877,057.64

27

(Copy)

ALIEN PROPERTY CUSTODIAN, ARLINGTON BUILDING,
VERMONT AVENUE AND H STREET,
Washington, March 9, 1923.

THE HONORABLE THE SECRETARY OF THE TREASURY,
DIVISION OF BOOKKEEPING & WARRANTS,
Washington, D. C.

SIR:—On March 29, 1918, there was established a credit of \$5,077,057.64 for special account No. 8—account of undisclosed enemy No. 1—Trust 9322, representing funds held by the Federal Reserve Bank of Boston.

It is now desired that you transfer on your records from Trust 9322, the sum of \$2,200,000.00 to the amount of the Imperial German Government—*Trust No. 555—Special*. It is desired that this fund of \$2,200,000.00 be not intermingled with funds already on deposit in trust 555 and is therefore desired that you mark the new account opened as *Trust No. 555—Special*.

The funds to be so set aside are to be used for the Imperial German Government in connection with claim No. 386 and the claims associated therewith.

Very truly yours,

DIVISION OF TRUSTS,
(Signed) WM. M. WHITE,
Assistant Chief.

28 Twelfth: The court erred in not ordering, adjudging and decreeing that the evidence was insufficient to warrant a decree in favor of the plaintiff.

Thirteenth: The court erred in not ordering, adjudging and decreeing that the bill of complaint be dismissed.

Fourteenth: The court erred in not dismissing the bill of complaint.

All of which is respectfully submitted.

Dated, Washington, D. C., this 26 day of June, 1924.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

Service of a copy of the above acknowledged this 26 day of June, 1924.

M. CARTER HALL,
Attorney for the Plaintiff.

DESIGNATION OF RECORD

Filed June 26, 1924

* * * * *

To the Clerk of the Supreme Court of the District of Columbia:

29 You will please incorporate in the transcript of the record to be prepared in the above entitled cause on appeal to the Court of Appeals of the District of Columbia, the following documents and papers:

Bill of complaint.

Subpoenas.

Motion of defendants to dismiss bill of complaint.

Order of overruling motion to dismiss.

Answer of Defendants.

Stipulation as to facts.

Statement of evidence.

Final decree with notation of appeal.

Assignment of errors.

This designation of record.

PEYTON GORDON,

Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

Service of a copy of the above accepted this 26 day of June, 1924.

M. CARTER HALL,
Attorney for Plaintiff.

Memorandum

June 30, 1924: Statement of evidence filed.

30 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 29, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 41153 in equity, wherein Securities Corporation General, a corporation, is complainant and Frank White, Treasurer of the United States and Thomas W. Miller, Alien Property Custodian, are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 3rd day of September, 1924.

[SEAL.]

EW

MORGAN H. BEACH, Clerk.

31 In the Supreme Court of the District of Columbia holding
an equity court

(Stamped: Filed June 30, 1924. Morgan H. Beach, clerk.)

SECURITIES CORPORATION GENERAL, PLAINTIFF,

v.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, and Frank White, as Treasurer of the United States, defendants.

Eq. 41153.

Statement of evidence

This cause coming on for hearing before Mr. Justice Stafford on the 14th day of June, 1924, the following evidence and testimony was offered by the plaintiff:

The plaintiff in this case, as well as the plaintiff or plaintiffs, as the case may be, in the following cases:

Securities Corporation General *v.* Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States. Eq. No. 41153.

Middleton S. Borland, trustee *v.* Same. Eq. No. 41154.

H. G. Hilken *v.* Same. Eq. No. 41573.

American National Bank of St. Paul *v.* Same. Eq. No. 41285.

C. I. Stralem et al. *v.* Same. Eq. No. 42217.

The Equitable Trust Company of New York *v.* Same. Eq. No. 42270.

Abraham L. Garbat *v.* Same. Eq. No. 42321.

Anna Thalmann *v.* Same. Eq. No. 42322.

Republic Trading Company *v.* Same. Eq. No. 42323.

Jacob Kaufman *v.* Same. Eq. No. 42324.

August Heckscher *v.* Same. Eq. No. 42335.

32 offered testimony and evidence which showed that the treasury notes of the Imperial German Government for the payment of which the suits were brought, were owing to and owned by the plaintiff or plaintiffs in the cases, prior to October 6, 1917.

The plaintiff offered in evidence and there was admitted into evidence over the exception and objection of the defendants on the ground of immateriality and incompetency a sworn answer of these defendants in the case of Mechanics Securities Corporation *v.* these defendants, Equity No. 41284, the material portions of which, for the purpose of this appeal, are as follows:

"Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally answering the bill of complaint and as their separate and several answers say:

"(1-2) These defendants admit the averments of paragraphs numbered 1 and 2 of the bill of complaint.

"(3) That the allegations of paragraph numbered 3 of the bill of complaint are immaterial and irrelevant for the purposes of this suit, and these defendants should not be required to answer the same.

"(4-5) They admit the averments of paragraphs numbered 4 and 5 of the bill of complaint.

"(6) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 6 of the bill of complaint, and therefore demand strict proof thereof.

"Further answering the said paragraph, these defendants separately and severally say that on or about the 13th day of February, 1920, Chandler & Company, Inc., as trustee, filed its notice of claim pursuant to the terms and provisions of section 9 of the trading with the enemy act for ninety-six thousand five hundred and eighty dollars and fifty-five cents (\$96,580.55), which had theretofore been delivered to the Alien Property Custodian by the said Chandler & Company, Inc., as the money of the Imperial German Government. On the same date the said Chandler & Company, Inc., duly filed its application to the President for the allowance of the said claim under section 9 of the trading with the enemy act. The said claim of Chandler & Company, Inc., was based upon the fact that the said ninety-six thousand five hundred eighty dollars and fifty-five cents (\$96,580.55) had been deposited with the claimant prior to October 6, 1917, for the payment of interest on notes of the Imperial German Government. Thereafter the said claim was allowed by the Attorney General of the United States to whom the President had by executive order delegated his authority under the terms and

provisions of the trading with the enemy act for the reason
33 that as found by the Attorney General the aforesaid money had been paid over unqualifiedly to Chandler & Co., Inc., by the German Government for the purpose aforesaid and was held by Chandler & Co., Inc., not for the German Government but as trustee for the holders and owners of the said notes and upon the further finding by the Attorney General that the said money belonged to citizens of the United States both in the capacity of trustee and as cestui que trust, and the Treasurer of the United States was ordered to pay to Chandler & Co., Inc., the sum of \$96,580.55 out of the money held in the Treasury of the United States pursuant to the trading with the enemy act, in trust No. 555, as the property of the Imperial German Government. Thereafter the said claim was duly paid by the Treasurer of the United States, not in recognition of the validity of the claim of the plaintiff or of any other person as set forth in the bill of complaint, but upon the order of the Attorney General of the United States based upon his aforesaid findings.

"(7) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph 7 of the bill of complaint, and therefore demand strict proof thereof.

"(8) Answering the averments of paragraph numbered 8 of the bill of complaint, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that the Imperial German Government was an enemy within the purview and meaning of the said act, the amendments thereto, and the proclamations and Executive orders issued thereunder, and that certain moneys were owing or belonging to, held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said moneys and other property to be conveyed, transferred, assigned, delivered, and/or paid to him, to be by him held,

administered, and accounted for as provided by law. Thereafter the demands of the Alien Property Custodian were fulfilled and he received certain moneys, pursuant to the said demand, and paid the same to the Treasurer of the United States, in accordance with the provisions of the trading with the enemy act. The amount of said moneys received as aforesaid is, at the present time, approximately five hundred fifteen thousand, five hundred seventy-one dollars (\$515,571), and is held by the Alien Property Custodian in trust No. 555.

"Further answering said paragraph, these defendants separately and severally say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the trading with the enemy act, the amendments thereto, and the proclamations and Executive orders issued thereunder, after investigation, determined that certain money was by Lee, Higginson & Company, of Boston, Massachusetts, in the approximate amount of five million dollars (\$5,000,000) held for, by, on account of, and for the benefit of an unknown enemy. Thereupon the Alien Property Custodian required the said money to be paid to him. Thereafter the demand of the Alien Property Custodian was fulfilled, and he received as aforesaid the said sum of five million dollars (\$5,000,000), which he paid to the

34 Treasurer of the United States, in accordance with the terms and provisions of the trading with the enemy act, and the said money was thereupon placed to the credit of unknown enemy No. 1, in trust No. 9322. Thereafter, and to wit, on or about the 8th day of March, 1923, the Alien Property Custodian determined that two million two hundred thousand dollars (\$2,200,000) of the five million dollars (\$5,000,000) received as aforesaid was at the time of the receipt thereof by the Alien Property Custodian, held for, by, on account of, and for the benefit of the Imperial German Government. Thereupon the Alien Property Custodian directed the Treasurer of the United States to transfer from trust No. 9322 the sum of two million two hundred thousand dollars (\$2,200,000) and to place the same to the credit of the Imperial German Government, opening a special account designated "Trust 555, special." Thereafter the Treasurer of the United States, pursuant to the said instructions, so transferred the said two million two hundred thousand dollars (\$2,200,000) to said trust.

"Further answering said paragraph, these defendants say that they have no further knowledge, information, or belief with respect to the ownership of any of the said money received as aforesaid by the Alien Property Custodian, and this Court must determine out of what, if any, of the money held by the Alien Property Custodian, and/or the Treasurer of the United States, any claim which these defendants may establish must be paid.

"(9) They have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered 9 of the bill of complaint, and therefore demand strict proof thereof.

"(10) They admit the averments of paragraph numbered 10 of the bill of complaint."

The plaintiff offered in evidence and there was admitted into evidence over the objection and exception of the defendants on the ground of immateriality and irrelevancy the following documents marked "Plaintiff's Exhibit 4":

UNITED STATES OF AMERICA,
Treasury Department, June 13, 1924.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the record entries of the Treasury in trust No. 9322, "Undisclosed enemy #1," and trust No. 555—Special, "Imperial German Government," showing transfer of funds from trust No. 9322 to trust No. 555—Special, and the letter dated March 9, 1923, authorizing such transfer in this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL]

GARRARD B. WINSTON,
Under-Secretary of the Treasury.
H. H.

35 Trust 333—*special*. Dated C/D No. Trans. from
Tr. 9322. (The following appears in red ink:) (4 suits
5/11/23) (5 suits Imperial German Government. Amount Col.
Bk. \$2,200,000.00 A. P. C. letter of 3/9/23.

Do not post on this card.

Trust #9322. Date C/D No. 3/29/18 1. Undisclosed
enemy #1. Amount Col. Bk. 5,077,057.64.

NOTE.—Above amount originally deposited by Custodian in Boston
F. R. B. transferred to Treasury under above date,
Trans. to Tr. 555 Special 2,200,000.00 A. P. C. letter 3/9/23.

\$2,877,057.64

(Copy)

ALIEN PROPERTY CUSTODIAN, ARLINGTON BUILDING,
VERMONT AVENUE AND H STREET,
Washington, March 9, 1923.

The Honorable The SECRETARY OF THE TREASURY,
DIVISION OF BOOKKEEPING & WARRANTS,

Washington, D. C.

SIR: On March 29, 1918, there was established a credit of \$5,077,057.64 for Special Account No. 8, account of undisclosed enemy No. 1, Trust 9322, representing funds held by the Federal Reserve Bank of Boston.

It is now desired that you transfer on your records from trust 9322, the sum of \$2,200,000.00 to the amount of the Imperial German Government—trust No. 555—Special. It is desired that this fund of \$2,200,000.00 be not intermingled with funds already on deposit in trust 555 and is therefore desired that you mark the new account opened as Trust No. 555—Special.

The funds to be so set aside are to be used for the Imperial German Government in connection with Claim No. 386 and the claims associated therewith.

Very truly yours,

(Signed)

DIVISION OF TRUSTS.

Wm. M. WHITE,
Assistant Chief.

36 The defendants offered in evidence and there was received in evidence, over the objection and exception of the plaintiff, or plaintiffs, on the ground of immateriality and irrelevancy and that it is a self-serving declaration, the following document marked "Defendants' Exhibit A":

UNITED STATES OF AMERICA,
Treasury Department, May 5, 1924.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed copy of a letter dated March 14, 1924, signed Thos. W. Miller, Alien Property Custodian, and addressed to the honorable the Secretary of the Treasury, is a true copy of the original letter on file in this department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.]

GARRARD B. WINSTON,
Undersecretary of the Treasury.
F. H.

ALIEN PROPERTY COSTODIAN, ARLINGTON BUILDING,
VERMONT AVENUE AND H STREET,
*Washington, March 14, 1924.

The honorable the SECRETARY OF THE TREASURY,
DIVISION OF BOOKKEEPING AND WARRANTS,

Washington.

SIR: Under date of March 29, 1918, there was deposited to the credit of trust No. 9322, undisclosed enemy No. 1, the sum of \$5,077,057.64. On March 10, 1923, there was transferred from this trust to trust No. 555, special, the sum of \$2,200,000.00 under orders from this office.

This letter is for the purpose of withdrawing the instructions sent you under date of March 10, 1923, and it is our desire that the sum of \$2,200,000.00 be retained in trust No. 9322, undisclosed enemy No. 1.

It was not intended that the administrative action so taken and within the proper functions of this office should be construed as establishing title or ownership to the fund so transferred.

I am advised by the Department of Justice that a decree has been entered in the suit of the Mechanics Security Corporation against Thomas W. Miller, as Alien Property Custodian, and Frank White, treasurer, requiring the payment by you out of the funds so transferred, of the sum of \$500,000.00; and that this decree was entered without proof of ownership in the Imperial German Government.

37 because of an admission contained in our answer that the said fund had been transferred. The answer was intended and supposedly contained the necessary allegation to require proof of ownership.

There has been filed with this office a claim of the United States of America by Frank T. Hines, Director of the United States Veterans' Bureau, for the sum of \$29,304,553.39, and I am further advised that numerous other suits are pending by private claimants against the Imperial German Government, seeking resort to the fund so established. It is clear to me that the public interest re-

quires that before any of these moneys be disbursed, there shall be a judicial determination of ownership, and I am accordingly requesting the foregoing action pending a determination by the courts on this point.

Respectfully yours,

(Signed)

THOMAS W. MILLER,
Alien Property Custodian.

TWM:SH

There was introduced into evidence for the convenience of the court the following table:

38 Statement of claims by owners of Imperial German Government Treasury notes, series No. 26. Total outstanding issue, \$2,531,000

Claimant	Claim filed with Alien Prop. Custod.	Date suit filed	Place	Suit calendar	Final decree	Amount		Total
						Principal	Interest to June 14, 1924	
Securities Corporation General		Nov. 19, 1918	Apr. 5, 1923	Washington	Mar. 24, 1924	\$250,000.00	\$73,750.00	\$323,750.00
Mechanics & Metals Nat. Bank		Oct. 8, 1919	May 9, 1923	Washington	Mar. 3, 1924	500,000.00	147,500.00	647,500.00
Krauth, Nachod & Kuhne		Dec. 6, 1918	Apr. 4, 1923	Washington	Apr. 10, 1924	100,000.00	29,500.00	129,500.00
H. G. Hilken		Aug. 17, 1918	July 26, 1923	Washington	Mar. 26, 1924	65,000.00	19,175.00	84,175.00
American National Bank		July 23, 1920	Mar. 12, 1924	Washington	June 19, 1924	10,000.00	2,950.00	12,950.00
August Heckscher		July 23, 1920	Mar. 6, 1924	Washington	Mar. 24, 1924	25,000.00	7,375.00	32,375.00
Republic Trading Company		July 23, 1920	Mar. 6, 1924	Washington	June 19, 1924	178,000.00	52,510.00	230,510.00
A. L. Garbat		July 23, 1920	Mar. 6, 1924	Washington	Mar. 24, 1924	5,000.00	1,475.00	6,475.00
Anna Thalmann		July 25, 1920	Mar. 6, 1924	Washington	June 19, 1924	1,000.00	325.00	14,245.00
Jacob Kaufmann		July 23, 1920	Mar. 6, 1924	Washington	June 19, 1924	10,000.00	3,250.00	12,250.00
Lilly Busch		Sept. 17, 1920	Mar. 23, 1923	St. Louis	.....	400,000.00	118,000.00	518,000.00
A. A. Busch		Sept. 17, 1920	Mar. 23, 1923	St. Louis	.....	100,000.00	29,500.00	129,500.00
Boatman's Bank		Dec. 9, 1918	Mar. 23, 1923	St. Louis	Mar. 24, 1924	12,000.00	3,540.00	15,540.00
Haligten & Company		Oct. 23, 1922	Feb. 8, 1924	Washington	June 19, 1924	200,000.00	39,000.00	239,000.00
Northwestern Trust Company		Aug. 13, 1918	Mar. 23, 1923	St. Louis	May 7, 1924	10,000.00	2,950.00	12,950.00
Mercantile Trust Company of N. Y.		Dec. 5, 1918	Mar. 23, 1923	St. Louis	May 7, 1924	100,000.00	29,500.00	129,500.00
Equitable Trust Company of N. Y.		Feb. 28, 1919	Feb. 25, 1924	Washington	Apr. 4, 1924	500,000.00	147,500.00	647,500.00
Busch & Lomb Optical Company		Mar. 9, 1922	No suit	.....	.....	50,000.00	14,750.00	64,750.00
A. F. & O. R. Lichtenstein		July 23, 1920	No suit	.....	.....	5,000.00	1,475.00	6,475.00
Total						2,531,000.00	726,645.00	3,257,945.00

39 This is the substance of all the evidence and testimony at the said hearing.

WENDELL P. STAFFORD, *Justice.*

I consent to the statement of evidence as above set forth.

CARLIN, CARLIN & HALL,

Attorneys for Plaintiff.

DEAN HILL STANLEY

Attorney for Defendants.

The above is also the statement of evidence in each of the following cases:

Middleton S. Borland, trustee, *v.* Thomas W. Miller, as Alien Property Custodian. Eq. No. 41154.

H. G. Hilken *v.* Same. Eq. No. 41573.

American National Bank of St. Paul *v.* Same. Eq. No. 41285.

C. I. Stralem et al *v.* Same. Eq. No. 42217.

The Equitable Trust Co. of New York *v.* Same. Eq. 42270.

Abraham L. Garbat *v.* Same. Eq. No. 42321.

Anna Thalmann *v.* Same. Eq. No. 42322.

Republic Trading Co. *v.* Same. Eq. No. 42323.

Jacob Kaufman *v.* Same. Eq. No. 42324.

August Heckscher *v.* Same. Eq. No. 42335.

WENDELL P. STAFFORD, *Justice.*

I consent to the statement of evidence as above set forth.

CARLIN, CARLIN & HALL,

Attorney for Plaintiff.

DEAN HILL STANLEY,

Attorney for Defendants.

McKENNEY & FLANNERY,

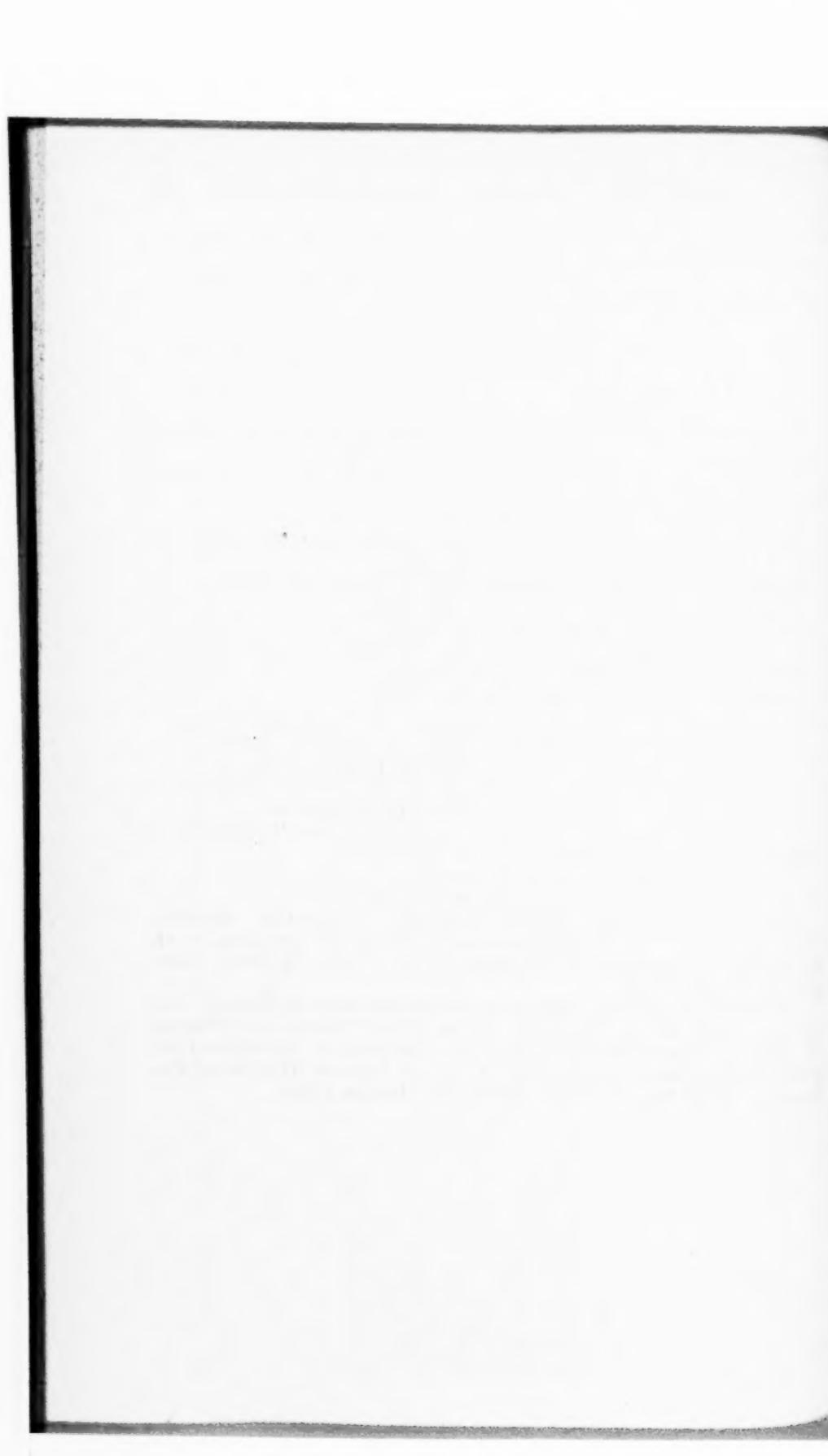
Attorneys for Equitable Trust Co.

Plaintiff in No. 42270, Equity.

(Indorsed:) Eq. No. 41153. Securities Corporation General, Plaintiff, *v.* Thomas W. Miller, as Alien Property Custodian, et al, Defendants. Statement of Evidence. Filed June 30, 1924. Morgan H. Beach, Clerk.

(Indorsed on cover:) District of Columbia, Supreme Court. No. 4202. Frank White, Treasurer of the United States, and Thomas W. Miller, Alien Property Custodian, Appellants, *v.* Securities Corporation General, a corporation. Court of Appeals, District of Columbia. Filed Sept. 4, 1924. Henry W. Hodges, Clerk.





24

In Court of Appeals of District of Columbia

* * * * *

NO. 4202. FRANK WHITE, TREASURER OF THE UNITED STATES, AND THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN, APPELLANTS, VS. SECURITIES CORPORATION GENERAL, A CORPORATION.

[Titles omitted.]

25

Argument of cause

Jan. 6 and 7, 1925

The argument in the above-entitled causes was commenced by Mr. Dean H. Stanley, attorney for the appellants.

* * * * *

The argument in the above-entitled causes was continued by Mr. M. Carter Hall, attorney for the appellees, and was concluded by Mr. Dean H. Stanley, attorney for the appellants.

26

Opinion

[Titles omitted.]

27 Mr. Justice VAN ORSDEL delivered the opinion of the court:

These cases are here on appeal from final decrees of the Supreme Court of the District of Columbia against appellants White, as Treasurer of the United States, and Miller, as Alien Property Custodian, defendants below, in which White, as Treasurer, is required, in cases numbered 4202, 4204, 4206, 4208, 4217, 4219, 4221, 4223, 4225, 4227, and 4229, to pay to the plaintiff in each case certain sums of money out of funds in the Treasury of the United States seized and held by him as property of the Imperial German Government.

These suits were brought in the Supreme Court of the District of Columbia by the holders of certain notes against the Imperial German Government, issued and sold by Germany prior to the entrance of the United States into the war. The notes were payable in American currency on April 1, 1917, five days prior to the declaration of war between the United States and Germany. Upon payment of interest in advance the maturity of the notes was extended to April 1, 1918.

Concededly the notes sued on constituted a debt within the meaning of the provisions of sec. 9 of the trading with the enemy act as amended, 42 Stats., 1511. It is averred in the bills of the respective plaintiffs that the Alien Property Custodian now has in his possession or to his credit in the Treasury of the United States, funds of the Imperial German Government which were paid and delivered to him under the provisions of the trading with the enemy act, and which are available by law and sufficient in quantity to pay plaintiffs' claims both principal and interest.

Defendants, Miller and White, filed motions to dismiss the bills of complaint upon the grounds that the Imperial German Government, or its successor, is a necessary party to the suits, and that pursuant to the terms and provisions of the trading with the enemy act and the treaties between the United States and Germany, the United States is the owner of the moneys which plaintiffs seek in these suits to subject to the payment of their claims. The motions to dismiss were overruled and defendants answered admitting the citizenship and residence of the plaintiffs; that plaintiffs are "persons" within the meaning of sec. 9 of the trading with the enemy act, and that the Imperial German Government is an enemy within the meaning of the act. But as to other allegations in the bills, strict proof was demanded.

After answers were filed by defendants White and Miller, the Attorney General filed in each case a suggestion as to certain rights of the United States, asserting in substance that the German Government, as a result of the war, is heavily indebted to the United States; that if the plaintiffs herein, and certain other claimants enumerated, are permitted to satisfy their claims against the fund now held in the Treasury of the United States to the account of the German Government, the said fund would be exhausted and there would be nothing from which the United States and other creditors could secure the payment of their claims, and that such a course would lead to an inequitable preference of creditors. It is then prayed on behalf of the United States that the bills be dismissed; that the claim of the United States be declared a valid and existing indebtedness which the Treasurer should be ordered to pay out of the fund aforesaid; that the court award the United States priority over other claims, or that it be entitled to share pro rata with other claimants in the distribution of the fund; that the court take jurisdiction of the claim of the United States against the Imperial German Government, and that the court order the claim of the United States paid out of said fund.

The plaintiffs filed motions to strike out the suggestion upon the grounds, among others, that the suggestion put in issue matters existing between the German Government and the United States, neither of which are proper parties to these suits; that the United States is not authorized to file such notice of claims under sec. 9 of the trading with the enemy act; that the court is without jurisdiction to determine the right of the United States in respect of the claims set up against the Imperial German Government, and that it appears on the face of the suggestion that the claims asserted have been settled between the United States and Germany by treaty, and are, therefore, not matters within the jurisdiction of the court, but are matters for diplomatic intercourse and settlement between the respective sovereigns.

The court sustained the motions to strike, from which the United States has appealed in cases numbered 4201, 4203, 4205, 4207, 4216, 4218, 4220, 4222, 4224, 4226, and 4228.

The cases were heard on bill and answer, and certain evidence adduced establishing that there was on June 13, 1924, to the account of the Imperial German Government in the Treasury of the United States \$2,715,571, more than sufficient to satisfy the plaintiffs' claims.

This sum was accounted for by record entries of the Treasury Department showing a fund of \$515,571, deposited by the Alien Property Custodian with the Treasurer, in Trust No. 555-Special, "Imperial German Government"; and the sum of \$2,200,000, transferred by order of the Custodian, March 9, 1923, from Trust No. 9322, "Undisclosed enemy No. 1," to Trust No. 555-Special, "Imperial German Government."

Three propositions are involved in these appeals:

First, is the Imperial German Government a necessary party to these suits?

Second, is the evidence adduced sufficient to establish the existence in the Treasury of the United States of a fund belonging to the Imperial German Government against which these claims may be asserted?

Third, has the United States the right to set up its claim against Germany as a defense in these suits, in order that it may lay claim to the funds in the Treasury which had been seized as funds of the Imperial German Government?

We come now to the consideration of the necessity of making the German Nationals, successor of the Imperial German Government, a party defendant in the present cases. The seizure of any enemy's property is justified as an act of war. Two courses were open to the United States, in respect of property belonging to an enemy or ally of enemy, either to seize the property and conserve it for future disposition, or to confiscate it. *Miller v. United States*, 11 Wall. 268. In either case the action of the Government would be sustained. Indeed the property of any enemy or ally of enemy, seized under the trading with the enemy act, so far as its return is concerned, is in a state of confiscation, since Congress specifically reserved to itself its future disposition. The property here in question, concededly enemy property, would be, but for sec. 9, the property of the United States, subject to whatever disposition Congress might deem proper. The seizure of the funds in question divested the German Government of all title or interest therein, and their subsequent disposition is a matter with which it is not concerned. *Munich Reinsurance Co. v. First Reinsurance Co. of Hartford*, 300 Fed. 345.

Section 9 of the trading with the enemy act is a remedial measure, affording the method by which property wrongfully seized may be restored to its proper owner; or by which debts "owing from an enemy or ally of enemy" may be recovered out of the property seized. To this extent, the United States has relinquished all claims it might otherwise have asserted under confiscation. Recovery under the act may be had either through executive allowance or by decree of a court. In all proceedings, however, against the funds so seized and held, the Alien Property Custodian or the Treasurer of the United States, or both, are made by the statute the proper defendants. The Alien Property Custodian stands in the relation of a common law trustee. His appearance as defendant furnishes all the protection to which the parties are entitled.

The silence of the trading with the enemy act, as to the right or necessity of an enemy or ally of enemy to be made a party defendant, is significant. The act in sec. 2, among other things, defines the term "enemy" as follows: "The word 'enemy,' as used herein, shall be

deemed to mean, for the purposes of such trading and of this act
* * * (b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof." The act further defines the meaning of the term "person" and the meaning and significance of the words "United States." The German Government, therefore, was an enemy of the United States, within the terms of the trading with the enemy act.

The object of sec. 9 was to give a speedy and efficient remedy to nonenemy persons against losses and inconvenience liable to 29 result from the strict enforcement of the act. To have re-

quired the joinder of the enemy-owner, as a party defendant in each instance, would have amounted to a denial of remedy to non-enemy creditors. This situation was well known and manifest to Congress. It may well be that an enemy-owner, for example the German Government in the present cases, could, upon request, be made a party defendant. *McVeigh v. United States*, 11 Wall, 259. But this could only be done at the request of the sovereign itself. No power resides in Congress or in the courts to require the sovereignty of Germany to become a party defendant in any action. This could only occur through the act of the sovereign itself.

It follows, therefore, that inasmuch as the German Government can not be brought into court, except at its own election, the court would be without jurisdiction of these cases, and the act would be a mere nullity. It is elementary that debts due from a friendly nation can not be enforced in the courts of the creditor nation.

In the proper sequence the contention that the United States is a proper party to these suits may next be considered. This is urged substantially upon two grounds: First, that the United States may enforce a prior claim against this money in the hands of the defendants in order to protect itself against losses sustained during the war. Second, that the fund should be held by the defendants to satisfy claims arising under the provisions of the treaty of peace made between Germany and the United States on August 25, 1921, which embraces all persons, citizens of the United States, who suffered damages and injuries to person or property at the hands of the Imperial German Government.

Again, the silence of the trading with the enemy act, as to the necessity of the United States being made a party to suits brought under sec. 9, and the specific designation of the Alien Property Custodian or the Treasurer or both as defendants, is significant. It is nowhere provided in the act that enemy-funds in the possession of the defendants may be subjected to the payment of claims due the United States. Nor do we think that the United States is a "person," as mentioned in sec. 9 of the act, or such a party as can take advantage of the provisions thereof. It may be suggested that if, as contended, the United States can assert a claim in the courts against this fund, the action should be brought by the United States directly, it can not be asserted through intervention by way of suggestion, or by motion to dismiss in the present cases. In other words, the United States has no such interest in the fund here in question as can be affected by the present suits. The fund has been set aside by the act for the satisfaction of such claims as may be legally brought against

it by claimants other than the United States. The United States has relinquished any interest it may have had in the fund in favor of creditors of the enemy, in this instance the German Government. The claims here asserted, are, therefore, not against the United States. "While the suit, as held in *Banco Mexicano v. Deutsche Bank*, 263 U. S., 591, 603 (affirming 289 Fed. 924), is one against the United States, the claim was not against it. No debt was alleged to be owing from it to the plaintiff." *Miller v. Robertson*, 000 U. S. 000. (October Term, 1924.) In other words, the rule of sovereign immunity from liability does not apply.

The contention that in addition to plaintiffs' claims there are outstanding claims being asserted against the fund in question, which in the aggregate amount to \$3,257,945, or more than the amount of the fund now in the Treasury, is of no importance. Section 9 (a), as amended, provides, among other things, as follows: "If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated."

It is clear from the terms of the act that a suit brought under it is not in the nature of a creditor's bill calling for a marshalling of claims, nor does it give any preference to one creditor over another or call for a sharing pro rata with other creditors in the funds against which the claims are made. This court has no jurisdiction over the outstanding judgments, nor is it concerned with the ability of the fund in the Treasury to meet the various claims against it. The contentions of the Government in these particulars might have been provided for by Congress, but they were not, and the court must apply the law as it finds it.

Coming now to the question of the sufficiency of the evidence adduced by plaintiffs to sustain the judgments of the court in the respective cases, there appears in paragraph 8 of the bill of complaint the following allegation: "That the Alien Property Custodian now has in his possession or to his credit in the Treasury of the United States funds of the Imperial German Government, which were paid and delivered to him under the provisions of said trading with the enemy act, as amended, and which are available by law, sufficient to pay the entire indebtedness, both principal and past due interest owing to complainant."

The defendants, answering this paragraph, alleged that they had no knowledge or information sufficient to form a belief with respect to the averments of paragraph 8 of the bill of complaint, and therefore, demand strict proof thereof. In support of this averment of the plaintiffs, the answer filed by the defendants Miller and White in the case of the Mechanics Securities Corporation *v.* Frank White, as Treasurer of the United States, and Thomas W. Miller, as Alien Property Custodian, then pending in the Supreme Court of the District of Columbia, and submitted on this appeal as No. 4195, was

offered and received in evidence over objection and exception by defendants. The answer in that case, made under oath by the defendants, set forth that the custodian had turned over to the 30 Treasurer \$515,571, which was deposited in Trust No. 555-Special, "Imperial German Government"; and that there had been transferred to the same trust \$2,200,000 from Trust No. 9322, "Unknown enemy No. 1," making a total credit to Trust No. 555-Special, "Imperial German Government," of \$2,715,571. The status of these respective trusts was also shown by true copies of record entries from the Treasury Department, which were put in evidence.

This was unquestionably competent evidence and sufficient in character to establish a *prima facie* case as to the existence of funds seized from the Imperial German Government, and held in the Treasury against which the claims of plaintiffs could be asserted. As was said in *Pope v. Allis*, 115 U. S. 363, 370: "When a bill or answer in equity or a pleading in an action at law is sworn to by the party, it is competent evidence against him in another suit as a solemn admission by him of the truth of the facts stated. *Studdy v. Sanders*, 2 D. & R. 347; *De Whelpdale v. Milburn*, 5 Price, 485; *Central Bridge v. Lowell*, 15 Gray 106; *Bliss v. Nichols*, 12 Allen 443; *Elliott v. Hayden*, 104 Mass. 180; *Cook v. Barr*, 44 N. Y. 156; *Taylor on Evidence*, sec. 1753, 7th ed.; *Greenleaf Evidence*, secs. 552, 555."

The truth of these statements is not controverted. The only attempt made by defendants to rebut this testimony was the offer of a copy of a letter, dated March 14, 1924, from the Alien Property Custodian to the Secretary of the Treasury, attempting to withdraw the instruction sent to the Secretary of the Treasury, under date of March 10, 1923, directing the transfer of the \$2,200,000 from Trust No. 9322 to Trust No. 555-Special, "Imperial German Government." The court sustained the objection of plaintiffs to the admission of this letter in evidence, to which ruling defendants excepted. It is contended by plaintiffs that it was beyond the power of the custodian to thus shift the fund during the pendency of these suits. Counsel for defendants on the contrary state in their brief that "the plaintiff in the cause must rely as to the two million two hundred thousand dollars above upon the instructions given by the custodian after the money had been seized as belonging to an unknown enemy. If the custodian had authority to change the ownership of the money at the time referred to in the original answer, he had just as much authority to change it and order it held to the credit of the unknown enemy again."

We are not impressed by this contention. The transfer of the \$2,200,000 to Trust No. 555-Special, "Imperial German Government," on March 8, 1923, was a determination by the custodian of the enemy ownership of the fund. It amounted to a finding after investigation, that the fund should be held "for, by, on account of, or on behalf of, or for the benefit of" the Imperial German Government. There was no change of the ownership by the custodian when the fund was transferred on March 8, 1923, since there is nothing in the record to indicate that the ownership up to that date had been specifically determined. The custodian, then exercising

the power imposed upon the President, determined specifically the enemy ownership of this fund. In further support of the lack of evidential effect of the letter of March 14, 1924, it contains no reasons, nor is it supported by any evidence, which challenges or affects the correctness of the former determination of enemy ownership.

It was not within the power of the custodian to defeat the present actions, during their pendency in the court below, by his attempted transfer of the fund back to "unknown enemy Trust No. 9322." In case of suit, the statute itself provides for the retention of the money or property in the custody of the Alien Property Custodian or the Treasurer of the United States, to await the final judgment or decree. It is clear, therefore, that the custodian having determined the question of enemy ownership, and having designated the fund in the Treasury to which it belonged, could not, without at least good and sufficient reasons, by the mere transfer of this fund, so change the status of the property in litigation, as to destroy claimant's cause of action while suit was pending.

In the appeals against the Equitable Trust Company of New York, Numbers 4207 and 4208, counsel for appellee company challenge the right of the United States to prosecute an appeal in these cases under sec. 226 of the Code of the District of Columbia providing that "any party aggrieved by any final order, judgement, or decree of the Supreme Court of the District" may appeal to this court. The objection is based upon the ground that the United States "was not a party in any sense or aspect of the case in the court below, and it never at any time sought to have itself made a party by intervention or otherwise." Consequently there is no final order or decree from which it may appeal. We think this objection to the right of appeal by the United States must be sustained. No petition was filed in the court below by the United States for right to intervene, nor can the suggestion filed be treated as a petition for intervention. The order striking the suggestion from the files was a mere interlocutory order, which could not furnish the basis for a separate appeal. The attempt here made by the United States is to conduct separate appeals, and thereby avoid any connection with the original cases.

The lack of necessity for intervention by the United States is apparent. The Alien Property Custodian and the Treasurer are made defendants by the express terms of the act, and as such have power to defend the interests of the United States. This they have attempted to do in the original cases by motion to dismiss for lack of proper parties. In support of this motion they could have advanced all the reasons for making the United States a party defendant, that have been suggested in the paper sought to be filed in the court below. The appeals of the United States in these cases will be dismissed.

Counsel have likewise challenged the right of appeal to this court by the Alien Property Custodian and the Treasurer, on the ground that the trading with the enemy act is a special statute and in the absence of specific provision for appeal, appeal can not be prosecuted under sec. 226 of the District Code. The act provides specifically for appeals in cases arising under it from the District Courts of the United States to the Circuit Courts of Appeals, but makes no provision specifically for an appeal to this court

from the judgment or decree in a suit instituted in the Supreme Court of the District of Columbia.

Without stopping to review this contention at length, we are of opinion that it was the intention of Congress that a right of appeal should be retained in all cases brought under the act, and inasmuch as many of these cases have been appealed and considered by this court, and a number of them on further appeal considered by the Supreme Court of the United States, without this objection having been heretofore interposed, we will refuse now to interrupt this course of procedure. We hold, therefore, that the right of appeal in these cases is within the provisions of sec. 226 of the District Code.

In the aforesaid cases in which the United States is appellant, the appeals are dismissed. In the cases in which Frank White, Treasurer of the United States, and Thomas W. Miller, Alien Property Custodian, are appellants, the decrees are affirmed with costs.

32 In Court of Appeals of District of Columbia

[Title omitted.]

Judgment

March 2, 1925.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE VAN ORSDEL.

MARCH 2, 1925.

Judge JAMES F. SMITH of the U. S. Court of Customs Appeals sat in this case in the place of Mr. Chief Justice MARTIN.

33 In Court of Appeals of District of Columbia

[Title omitted.]

Petition for Appeal

Filed May 2, 1925

Now, come your petitioners, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, appellants in the above entitled cause, and show unto the court that on the 2nd day of March, 1925, a decision was rendered and a decree entered against them herein, in which decision and decree, to their damage and prejudice, certain errors were committed, as will appear from the assignment of errors filed herewith.

Your petitioners further show that the decree of the Court of Appeals herein is subject to review by the Supreme Court under the provisions of paragraphs first, fifth, and sixth of

section 250 of the Judicial Code in that the jurisdiction of the trial Court is in issue; that this case is one in which the existence and scope of the power and duty of an officer of the United States, to wit, the Alien Property Custodian, is drawn in question; and that this is a case in which a construction of a law of the United States is drawn in question by the defendants, to wit, the construction of the trading with the enemy act, as amended.

Wherefore your petitioners pray the allowance of an appeal to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court, and it appearing that this appeal is brought up by direction of a department of the Government, namely, the Department of Justice, that no bond, obligation, or security be required from your petitioners to answer in damages or costs, and that the said appeal shall operate as a supersedeas.

THOMAS W. MILLER,
As Alien Property Custodian.

FRANK WHITE,
As Treasurer of the United States.

By PEYTON GORDON,
*Attorney of the United States in and for
District of Columbia, Their Attorney.*

35 Service of a copy of the above petition for appeal received this 1st day of May, 1925.

C. C. CARLIN,
M. CARTER HALL,
Attorneys for the Appellees.

36 In Court of Appeals, District of Columbia

[Title omitted.]

Assignment of errors

Filed May 2, 1925

And now come Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, the appellants herein, and say that in the record and proceedings of the Court of Appeals in the above-entitled cause and in the rendition of the final decree therein, manifest error has intervened, to the prejudice of said appellant in this, to wit:

(1) The court erred in ordering, adjudging, and decreeing that the final decree entered in this case in the Supreme Court of the District of Columbia on the 19th day of June, 1924, be affirmed.

(2) The court erred in not ordering, adjudging, and decreeing that the final decree entered in the case in the Supreme Court of the District of Columbia on the 19th day of June, 1924, be reversed.

37 (3) The court erred in deciding and adjudging that the Imperial German Government was not a necessary party defendant to the suit.

(4) The court erred in not deciding and adjudging that the Imperial German Government was a necessary party to the suit.

(5) The court erred in adjudging and deciding that the Supreme Court of the District of Columbia had jurisdiction of the subject matter of the suit.

(6) The court erred in not adjudging and deciding that the Supreme Court of the District of Columbia was without jurisdiction of the subject matter of the suit.

(7) The court erred in deciding and adjudging that it is clear from the terms of the trading with the enemy act that a suit brought under it is not in the nature of a creditor's bill calling for a marshalling of claimants, nor does it give any preference to one creditor over another, or call for a sharing prorata with other creditors in the funds to which the claims are made.

(8) The court erred in deciding and adjudging that there was competent evidence and sufficient in character to establish a *prima facie* case as to the existence of funds seized from the Imperial German Government and held in the Treasury of the United States against which the claims of the plaintiffs could be asserted.

38 (9) The court erred in deciding and adjudging that the transfer of the \$2,200,000 to Trust No. 555—Special "Imperial German Government," on March 8, 1923, was a determination by the Alien Property Custodian of the enemy ownership of the fund.

(10) The court erred in deciding and adjudging that the transfer of the \$2,200,000 to Trust No. 555—Special, "Imperial German Government" on March 8, 1923, amounting to a finding, after investigation, that the fund should be held "for, by, on account of and on behalf of, or for the benefit of the Imperial German Government."

(11) The court erred in deciding and adjudging that there was nothing in the record to indicate that the ownership of the fund in question up to March 8, 1923, had been specifically determined.

(12) The court erred in not adjudging, ordering, and decreeing that the decree of the Supreme Court of the District of Columbia entered in the case on the 19th of June, 1924, be reversed and the cause remanded to that court with instructions that the bill of complaint be dismissed.

All of which is respectfully submitted.

THOMAS W. MILLER,
Alien Property Custodian.

FRANK WHITE,
Treasurer of the United States.

By PEYTON GORDON,
*Attorney of the United States in and for the
District of Columbia, Their Attorney.*

Service acknowledged this 1st day of May, 1925.

C. C. CARLIN,
M. CARTER HALL,
Attorney for Appellee.

[File endorsement omitted.]

39 In Court of Appeals of District of Columbia

[Title omitted.]

Order allowing appeal

May 4, 1925

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above-entitled cause, it is ordered by the court that said appeal be, and the same is hereby, allowed as prayed, the same to operate as a supersedeas.

40 [Citation in usual form showing service on M. Carter Hall, filed May 4, 1925, omitted in printing.]

41 In Court of Appeals of District of Columbia

[Title omitted.]

Præcipe for transcript of record

Filed May 2, 1925

The clerk will please prepare a transcript of record on appeal to the Supreme Court of the United States, in the above-entitled cause and include therein the following:

The printed record in the Court of Appeals.

Minute entry as to argument of case.

The opinion.

The decree.

Petition for the allowance of appeal and assignment of errors.

Order allowing appeal.

Citation.

This designation.

THOMAS W. MILLER,
Alien Property Custodian.

FRANK WHITE,

Treasurer of the United States.

By PEYTON GORDON,

*Attorney of the United States in and for the
District of Columbia. Their Attorney.*

Service acknowledged 1st day of May, 1925.

C. C. CARDEN,

M. CARTER HALL,

Attorney for Appellee.

42 Court of Appeals of District of Columbia

Clerk's certificate

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing, printed and type-written pages numbered from 1 to 41, inclusive, constitute a true

copy of the transcript of record and proceedings of said Court of Appeals in the case of Frank White, Treasurer of the United States, and Thomas W. Miller, Alien Property Custodian, appellants, vs. Securities Corporation General, a corporation, No. 4202, April Term, 1925, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 5th day of May, A. D. 1925.

[SEAL.]

HENRY W. HODGES,

Clerk of the Court of Appeals of the District of Columbia

[Indorsement on cover.] File No. 31,132. District of Columbia Court of Appeals. Term No. 425. Frank White, Treasurer of the United States, and Frederick C. Hicks, Alien Property Custodian, appellants, vs. Securities Corporation General. Filed May 8th, 1925. File No. 31,132.

[File indorsement omitted.]

